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3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
Facsimile (702) 949-8321
Telephone (702) 949-8320

40 North Central Avenue, Suite 1900
Phoenix, Arizona 85004-4429

Susan M. Freeman AZ State Bar No. 004199
Email: sfreeman@lrlaw.com
Rob Charles NV State Bar No. 006593
Email: rcharles@lrlaw.com
John Hinderaker AZ State Bar No. 018024
Email: JHinder@lrlaw.com

Attorneys for USACM Liquidating Trust

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

USA Commercial Mortgage Company,

USA Capital Realty Advisors, LLC,¹

USA Capital Diversified Trust Deed Fund,
LLC,

USA Capital First Trust Deed Fund, LLC,²

USA Securities, LLC,³

Debtors.

Affects:

- ☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR¹
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR²
Case No. BK-S-06-10729-LBR³

CHAPTER 11

Jointly Administered Under Case No.
BK-S-06-10725 LBR

**DECLARATION OF EDWARD M.
BURR IN SUPPORT OF MOTION
TO FURTHER EXTEND DEADLINE
TO FILE OBJECTION TO
ALLOWANCE OF CLAIMS; AND
CERTIFICATE OF SERVICE**

Date: April 30, 2009
Time: 9:30 a.m.

I Edward M. Burr, hereby declare under penalty of perjury that:

I am a principal with Sierra Consulting Group, LLC ("Sierra").

¹ This bankruptcy case was closed on September 23, 2008.

² This bankruptcy case was closed on October 12, 2007.

³ This bankruptcy case was closed on December 26, 2007.



1 I submit this declaration on behalf of the Motion to Further Extend Deadline to File
2 Objection to Allowance of Claims (the “Motion”) [DE 7003] filed by the USACM
3 Liquidating Trust (the “USACM Trust”), as successor to USA Commercial Mortgage
4 Company (“USACM”).

5 Sierra previously served as financial adviser to the Official Committee of
6 Unsecured Creditors of USA Commercial Mortgage Company (“Committee”).

7 I assisted the Committee in analyzing facts concerning these jointly administered
8 bankruptcy cases, including scheduled liabilities and proofs of claim. The Committee
9 ceased to exist on March 12, 2007, the Effective Date of the Debtors’ Third Amended
10 Joint Chapter 11 Plan of Reorganization (“Plan”), and I am now assisting the USACM
11 Liquidating Trust (“USACM Trust”) created under the Plan.

12 I make the following declaration based upon my personal knowledge, and upon the
13 records of the Debtors and the USACM Trust described in this declaration.

14 I understand that under the Plan as modified by the Confirmation Order, the
15 deadline for interested parties to object to Allowance of Claims and Equity Interests was
16 90 days after the Effective Date, or June 10, 2007. That deadline was further extended to
17 October 9, 2007 by a June 29, 2007 order [DE 4097] after a hearing held on June 22, 2007.
18 The deadline was further extended to October 15, 2007 by a bridge order that was
19 approved at a hearing held on August 23, 2007 [DE 4625]. On October 11, 2007, the
20 Court entered an order [DE 4971] extending the deadline to February 12, 2008. On
21 January 22, 2008, the Court entered an order [DE 5709] extending the deadline to June
22 12, 2008. On May 13, 2008, the Court entered an order [DE 6347] extending the deadline
23 to October 10, 2008. On December 2, 2008, the Court entered an Order [DE 6636]
24 extending the deadline to February 9, 2009. On February 19, 2009, this Court entered an
25 order [DE 6843] extending the deadline to June 9, 2009. .
26

1 To date there have been seven administrative claims filed totaling \$2,016,499.08;
2 103 priority claims filed totaling \$7,752,081; 1,676 secured claims filed totaling
3 \$297,052,436; 1233 unsecured claims filed totaling \$628,464,429; and 78 unknown claims
4 filed totaling \$389,391. Additional claims were scheduled by Debtors.

5 To date, the Trust has filed:

- 6 • Objections to 1667 secured claims that have been sustained and reclassified
7 as unsecured in aggregate of \$296,160,363.
- 8 • Objections to 76 priority claims that have been sustained and reclassified as
9 unsecured in aggregate of \$5,122,377.
- 10 • Objections to the status of 2 administrative claims totaling \$62,496 that have
11 been sustained and reclassified as unsecured.
- 12 • Objections to 80 “Wrong Debtor” claims in the amount of \$13,325,322. 62
13 of those objection were sustained or a stipulation withdrawing the subject
14 claim was approved.
- 15 • Objections to three claims not enforceable against USACM in the amount of
16 \$75,503,580; one of these claims totaling \$12,841,680 remains unresolved.
- 17 • Objections to 147 claims for lack of documentation in the amount of
18 \$19,708,808; 23 of these objections to claims totaling \$1,920,750 were
19 withdrawn due to claimants sending in sufficient supporting document and
20 124 objections were sustained totaling \$17,788,058.
- 21 • Objections to 36 claims on miscellaneous grounds in the amount of
22 \$58,532,258. 6 of these objections were sustained totaling \$27,002,383; 8
23 objections have stipulated withdrawals totaling \$7,496,447; 4 claims totaling
24 \$17,772,911 have orders allowing the claim; and 18 objections totaling
25 \$6,260,517 are unresolved.
- 26

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- 1 • A total of 1156 objections to Direct Lenders claims in the amount of
- 2 \$92,936,789 principally on loans paid in full by the borrowers. The Court
- 3 has sustained these objections or the claimants have agreed that they are not
- 4 making a claim based upon the paid loan in question, with the exception of
- 5 the Copper Sage Commerce I loan which will be heard on 4/30/09.
- 6 • A stipulation has been executed and an order signed which provides for the
- 7 disallowance of the Spectrum and Weddell proofs of claim in the amount of
- 8 \$125,000,000.
- 9 • Objections to 32 claims filed on basis of the Palm Terrace Lawsuit. The
- 10 Court disallowed 31 claims totaling \$62,000,000 and partially disallowed
- 11 \$1,815,000 of the remaining \$2,000,000 claim. Thus, the Trust's objection
- 12 to the remaining \$185,000 of that claim remains pending.
- 13 • A total of 202 claims totaling \$26,241,354 have been determined to be
- 14 amended or duplicated by another claim.
- 15 • An additional 69 claims totaling \$27,002,029 have stipulated withdrawals.

16 The Trust prosecuted objections to claims, including the Loans known as Opaque
 17 Mt Edge \$7,350,000; HFA Riviera; HFA Riviera 2nd; Hasley Canyon; Fiesta Beaumont
 18 \$2.4 million; Ashby Financial Company \$7,200,000; Glendale Tower Partners, LLC;
 19 Golden State Investments II; 5252 Orange, LLC; Midvale Market Place, LLC; Urban
 20 Housing Alliance – 435 Lofts Loan; Boise/Gowen 93, LLC; LCG Gilroy, LLC; J Jireh's
 21 Corporation; One Point Street, LLC – HFA North Yonkers; Goss Road Loan; Elizabeth
 22 May Real Estate Loan; Slade Development; Wasco Investments, LLC; I-40 Gateway
 23 West, LLC 2nd; Cottonwood Hills, LLC; Standard Property Development, LLC; Meadow
 24 Creek Partners; I-40 Gateway West; Gateway Stone; Palm Springs Marquis Hotel; Roam
 25 Development; Del Valle Isleton; Preserve at Galleria; and Copper Sage Commerce I. The
 26 Trust has other adversary proceedings pending that constitute claims objections.



1 Further, as the Trust has received information from claimants, it has entered into
2 stipulations for the allowance and disallowance of priority and unsecured claims.
3 Conversely, some claimants have stipulated to either withdraw their claims or have them
4 reclassified as unsecured claims upon discussion with the USACM Trust's counsel.

5 The remaining direct lender claims relate to loans that (1) partially performed; and
6 (2) are non-performing or still outstanding. The extent to which those loans perform
7 and/or the direct lenders may be compensated from the sale of collateral securing the loans
8 has a major impact on the amount of the claims. The Trustee is handling these claims on a
9 loan by loan basis.

10 Not all of the claims objections can be resolved through motions. The Court has
11 ordered that the Trust's objection to claim 1366 of Los Valles Land & Golf, LLC be
12 consolidated with a related adversary proceeding filed by the Trust against Los Valles and
13 its guarantor, Dan S. Palmer, Jr.

14 USACM Trust has 99 direct lender loans on record for which investors have filed a
15 proof of claim asserting money owed. To date USACM Trust has objected to proofs of
16 claims based on 27 of these loans for having been repaid in full. There are 3 additional
17 paid in full loans that also have amounts scheduled for unremitted principal. USACM
18 Trust has objected to the proofs of claims based on these loans, USACM Trust has
19 objected to the difference between the amount asserted on the proof of claim and the
20 predetermined amount allowed as an unsecured claim for the subject loan. There will be
21 an additional 69 direct lender loans outstanding after these loans are resolved, the majority
22 of these loans are being serviced by Compass Financial. USACM Trust has been unable
23 to obtain the status of these outstanding loans from Compass Financial.

24 All of the direct lender claims have been sorted on a loan by loan basis; USAM
25 Trust will begin to work through the direct lender claims, as information becomes
26 available from Compass, to see if there is a valid basis for a claim, and if so, in what

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1 amount. The USACM Trust is trying not to file an objection to any claim on a particular
2 direct loan until it is prepared to meet and confer with all of the claimants on that loan
3 under the alternative dispute resolution mechanism provided by the Plan.

4 I make this declaration under penalty of perjury of the laws of the United States of
5 America on April 1, 2009.

6 By /s/ Edward M. Burr

7 Edward M. Burr

8 Copy of the foregoing served on April 1,
9 2009, via e-mail or first class postage
10 prepaid U.S. Mail to all parties listed on
11 the Post Effective Date Service List on
12 file with this Court:

13 /s/ Marilyn Schoenike

14 Marilyn Schoenike
15 Lewis and Roca LLP
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